

## § 2.759

## 10 CFR Ch. I (1–1–03 Edition)

thereon, certify directly to the Commission<sup>7</sup> for determination the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made, or the Commission may direct such further proceedings as it deems appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking pursuant to § 2.802.

[37 FR 15136, July 28, 1972, as amended at 56 FR 64975, Dec. 13, 1991; 60 FR 22491, May 8, 1995]

### § 2.759 Settlement in initial licensing proceedings.

The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose.

[37 FR 15137, July 28, 1972]

#### INITIAL DECISION AND COMMISSION REVIEW

### § 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty (40) days after its date unless any party petitions for Commission review in accordance with

§ 2.786 or the Commission takes review sua sponte or the decision is subject to the provisions of § 2.764.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own decision which will become final unless the Commission grants a petition for reconsideration pursuant to § 2.771; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order or denial of relief with the effective date;

(4) The time within which a petition for review of the decision may be filed, the time within which answers in support of or in opposition to a petition for review filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 4339, Mar. 12, 1966; 35 FR 11459, July 17, 1970; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

### § 2.760a Initial decision in contested proceedings on applications for facility operating licenses.

In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into

<sup>7</sup>The matter will be certified to the Commission notwithstanding the provisions of § 2.785.